

By: Anderson of Dallas

H.B. No. 3843

Substitute the following for H.B. No. 3843:

By: Shine

C.S.H.B. No. 3843

A BILL TO BE ENTITLED

AN ACT

relating to a franchise or insurance premium tax credit for low-income housing developments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapter V to read as follows:

SUBCHAPTER V. TAX CREDIT FOR LOW-INCOME HOUSING DEVELOPMENTS

Sec. 171.9241. DEFINITIONS. In this subchapter:

(1) "Allocation certificate" means a statement issued by the department certifying that a given development qualifies for a credit under this subchapter and specifying the amount of the credit.

(2) "Compliance period" means the period of 15 years beginning with the first taxable year of the credit period.

(3) "Credit" means the low-income housing tax credit authorized by this subchapter.

(4) "Credit period" means the period of six taxable years beginning with the taxable year in which a qualified development is placed in service. A qualified development consisting of more than one building is not considered to be in service until all buildings in the qualified development are placed in service.

(5) "Department" means the Texas Department of Housing and Community Affairs.

1           (6) "Development" has the meaning assigned by Section  
2 2306.6702, Government Code.

3           (7) "Federal tax credit" means the federal low-income  
4 housing credit created by 26 U.S.C. Section 42.

5           (8) "Qualified basis" means the qualified basis of a  
6 qualified development, as determined under Section 42, Internal  
7 Revenue Code.

8           (9) "Qualified development" means a development in  
9 this state that the department determines is eligible for a federal  
10 tax credit and that:

11                   (A) is financed with tax-exempt bonds;

12                   (B) is the subject of a recorded restrictive  
13 covenant requiring the development to be maintained and operated as  
14 a qualified development; and

15                   (C) for the lesser of 15 years after the  
16 beginning of the credit period or the period required by the  
17 department is in compliance with:

18                           (i) all accessibility and adaptability  
19 requirements for a federal tax credit; and

20                           (ii) Title VIII of the Civil Rights Act of  
21 1968 (42 U.S.C. Section 3601 et seq.).

22           (10) "Qualified taxpayer" means a person who owns an  
23 interest in a qualified development.

24       Sec. 171.9242. ENTITLEMENT TO CREDIT. A development is  
25 entitled to a credit against the taxes imposed under this chapter in  
26 the amount and under the limitations provided by this subchapter if  
27 the department classifies the development as a qualified

1 development.

2 Sec. 171.9243. ALLOCATION CERTIFICATE; CREDIT. (a) In a  
3 year during a credit period, a qualified taxpayer or other person  
4 may apply to the department for an allocation certificate.

5 (b) The department shall issue an allocation certificate if  
6 the development qualifies for a credit.

7 (c) The department may determine the amount of a credit  
8 awarded to a qualified development, subject to the following:

9 (1) the credit must be the minimum amount necessary  
10 for the financial feasibility of the qualified development after  
11 considering any federal tax credit;

12 (2) the amount of the credit during the credit period  
13 may not exceed the total federal tax credit awarded to the qualified  
14 development over the 10-year federal tax credit period;

15 (3) the manner in which the department awards the  
16 credit must be consistent with criteria established by the  
17 department; and

18 (4) in a year, the total amount awarded may not exceed  
19 the sum of:

20 (A) \$0;

21 (B) any unallocated credits for the preceding  
22 year; and

23 (C) any credit recaptured or otherwise returned  
24 to the department in the year.

25 Sec. 171.9244. LENGTH OF CREDIT; LIMITATION. (a) The  
26 credit established shall be claimed in equal installments during  
27 each year of the credit period.

1       (b) The total credit claimed under this subchapter for a  
2 report, including any carryforward under Section 171.9245, may not  
3 exceed the amount of franchise tax due for the report after any  
4 other applicable credit.

5       Sec. 171.9245. CARRY FORWARD OR BACKWARD. (a) If a  
6 qualified taxpayer is eligible for a credit that exceeds the  
7 limitations under Section 171.9244, the qualified taxpayer may  
8 carry the unused credit back for not more than three taxable years  
9 or forward for not more than 10 consecutive reports following the  
10 taxable year in which the allocation was made. A credit  
11 carryforward from a previous report is considered to be used before  
12 the current year installment.

13       (b) A credit that is not used may not be refunded to the  
14 qualified taxpayer.

15       Sec. 171.9246. RECAPTURE. (a) The comptroller shall  
16 recapture the amount of a credit claimed on a franchise tax report  
17 filed under this chapter from a qualified taxpayer if, on the last  
18 day of a taxable year, the amount of the qualified basis of the  
19 qualified development is less than the amount of the qualified  
20 basis as of the last day of the prior taxable year. The comptroller  
21 shall determine the amount required to be recaptured using the  
22 formula provided by Section 42(j), Internal Revenue Code, as  
23 effective January 1, 2017.

24       (b) A franchise tax return must include any proportion of  
25 credit required to be recaptured, the identity of any qualified  
26 taxpayer subject to the recapture, and the amount of credit  
27 previously allocated to the qualified taxpayer.

1       Sec. 171.9247. ALLOCATION OF CREDIT. (a) If a qualified  
2 taxpayer receiving a credit under this subchapter is a partnership,  
3 limited liability company, S corporation, or similar pass-through  
4 entity, the qualified taxpayer may allocate credit among its  
5 partners, shareholders, members, or other constituent taxable  
6 entities in any manner agreed by those entities.

7       (b) A qualified taxpayer that makes an allocation under this  
8 section shall certify to the comptroller the amount of credit  
9 allocated to each constituent taxable entity or shall notify the  
10 comptroller that it has assigned the duty of certification to one  
11 constituent taxable entity that shall provide the notification to  
12 the comptroller. Each constituent taxable entity is entitled to  
13 claim the allocated amount subject to any restrictions prescribed  
14 by this subchapter.

15       (c) An assignment under this section is not a transfer.

16       Sec. 171.9248. FILING REQUIREMENTS AFTER ALLOCATION. A  
17 qualified taxpayer that allocates a portion of the credit under  
18 Section 171.9247, and each taxable entity to which a portion was  
19 allocated, shall file with the qualified taxpayer's or taxable  
20 entity's report a copy of the allocation certificate received for  
21 that year.

22       Sec. 171.9249. RULES; PROCEDURES. The department and  
23 comptroller, in consultation with each other, shall adopt rules and  
24 procedures to implement, administer, and enforce this subchapter.

25       Sec. 171.9250. COMPLIANCE MONITORING. (a) The department,  
26 in consultation with the comptroller, shall monitor compliance with  
27 this subchapter in the same manner as the department monitors

1 compliance with the federal tax credit program.

2 (b) The department shall report any instances of  
3 noncompliance with this subchapter to the comptroller.

4 Sec. 171.9251. REPORT. (a) Not later than December 31 of  
5 each year, the department shall deliver a written report to the  
6 legislature. A report delivered in this section must:

7 (1) specify the number of qualified developments to  
8 have been allocated a tax credit during the year under this  
9 subchapter or Chapter 230, Insurance Code, and the total number of  
10 units supported by the developments;

11 (2) describe each qualified development to receive a  
12 tax credit under this subchapter or Chapter 230, Insurance Code,  
13 including:

14 (A) location;

15 (B) household type;

16 (C) demographic information available on the  
17 residents intended to be served by the development;

18 (D) the income levels intended to be served by  
19 the development; and

20 (E) the rents or set-asides authorized for the  
21 development;

22 (3) include housing market and demographic  
23 information to demonstrate how the qualified developments,  
24 supported by the tax credit, are addressing the need for affordable  
25 housing in their community; and

26 (4) analyze any remaining disparities in the  
27 affordability of housing within those communities.

1        (b) The department shall make a report delivered under this  
2 section available to the public.

3        SECTION 2. Subtitle B, Title 3, Insurance Code, is amended  
4 by adding Chapter 230 to read as follows:

5                CHAPTER 230. CREDIT AGAINST PREMIUM TAXES

6                        FOR LOW-INCOME HOUSING DEVELOPMENTS

7                                SUBCHAPTER A. GENERAL PROVISIONS

8        Sec. 230.001. DEFINITIONS. In this chapter:

9                (1) "Allocation certificate," "qualified  
10 development," and "qualified taxpayer" have the meanings assigned  
11 by Section 171.9241, Tax Code.

12                (2) "State premium tax liability" means any liability  
13 incurred by an entity under Chapters 221 through 226.

14                                SUBCHAPTER B. CREDIT

15        Sec. 230.051. CREDIT. (a) An entity is eligible for a  
16 credit against the entity's state premium tax liability in the  
17 amount and under the conditions and limitations provided by this  
18 chapter if the entity is a qualified taxpayer and the qualified  
19 development in which the entity owns an interest receives an  
20 allocation certificate issued in the manner prescribed by Section  
21 171.9243, Tax Code.

22        (b) The amount of the credit is equal to the amount provided  
23 by the allocation certificate.

24        Sec. 230.052. LENGTH OF CREDIT; LIMITATION. The entity  
25 shall claim the credit in the manner provided by Section  
26 171.9244(a), Tax Code, subject to the limitation provided by  
27 Section 171.9244(b), Tax Code. The entity may carry a surplus

1 credit forward or backward as provided by Section 171.9245, Tax  
2 Code.

3 Sec. 230.053. APPLICATION FOR CREDIT. (a) An entity must  
4 apply for a credit under this chapter on or with the tax return for  
5 the taxable year for which the credit is claimed and submit with the  
6 application the allocation certificate issued to the qualified  
7 development and any other information required by Subchapter V,  
8 Chapter 171, Tax Code.

9 (b) The comptroller shall adopt a form for the application  
10 for the credit. An entity must use this form in applying for the  
11 credit.

12 Sec. 230.054. RULES; PROCEDURES. The comptroller and the  
13 Texas Department of Housing and Community Affairs, in consultation  
14 with each other, shall adopt rules and procedures to implement,  
15 administer, and enforce this chapter.

16 Sec. 230.055. APPLICABLE PROVISIONS. The provisions of  
17 Subchapter V, Chapter 171, Tax Code, relating to recapture,  
18 allocation of credit, filing requirements after allocation, and  
19 compliance monitoring apply to the credit authorized by this  
20 chapter.

21 SECTION 3. (a) The Texas Department of Housing and  
22 Community Affairs may begin issuing allocation certificates under  
23 Section 171.9243, Tax Code, as added by this Act, in an open cycle  
24 beginning on January 1, 2018.

25 (b) A taxable entity may not claim a tax credit under  
26 Subchapter V, Chapter 171, Tax Code, as added by this Act, in  
27 connection with a privilege period that begins before January 1,



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1 2019, or on a report filed before January 1, 2020.

2 SECTION 4. This Act takes effect January 1, 2018.